

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3995 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

P M PANDYA

Versus

CHIEF EXECUTIVE OFFICER & VICECHAIRMAN

Appearance:

MR SR BRAHMBHATT for Petitioners

MR HL JANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/11/97

ORAL JUDGMENT

#. The petitioners, four in number, working as Dredging Operators (Dredge Operators) with the office of Chief Executive Officer and Vice Chairman, Gujarat Maritime Board, Ahmedabad, filed this Special Civil Application and prayer has been made that the action of respondents to reduce their pay scale be declared as arbitrary and unjustified.

#. From the facts which have been brought on record of the Special Civil Application, it is not in dispute that the petitioner No.1, 2 and 3 were given appointments on the post of Dredging Operators. In the case of petitioner No.1, in his appointment order the pay scale has been mentioned to be Rs.380-600, but in the case of petitioner No.2, the pay scale has been mentioned to be of Rs.425-700. In the appointment order of petitioner No.3, no pay scale has been mentioned but in his case he has been promoted to the above post from the post of Fitter. In the case of petitioner No.4, in his appointment order, his post has been mentioned as Dredger Crane Operator on Asham Dredger and pay scale has been mentioned to be Rs.380-600. Under the order dated 28th July 1981, the pay scales of Dredging Operator on Asham Dredger was stated to be Rs.425-700 and further that every employee appointed as Dredger Operator (Dredging Operator) should be same and be given the same pay scale. In pursuance of the said order, the pay scale of Rs.425-700 was given to the petitioners and arrears have also been paid. So the petitioners were given the pay scale of Rs.425-700. Under the order dated 9th March 1982, all of a sudden a change has been made and the pay scale of the petitioners was fixed at Rs.380-600. This order has been passed with reference to the Government Resolution dated 5th November 1977. This order has given rise to this Special Civil Application before this Court.

#. The respondents have contested this Special Civil Application by filing reply to the same. They have come up with the case that Dredging Operator/ Dredging crane Operator are the posts in the pay scale of Rs.380-600, now revised to Rs.1350-2200. It has further been stated that the pay scale of Rs.425-700 was revised to Rs.1400-2300.

#. The learned counsel for the petitioners contended that the petitioners were appointed on the post of Dredging Operator which is altogether a different and separate post from the post of Dredging Crane Operator and they have been given the pay scale of Rs.425-700 and under the impugned order their pay scale has been reduced to Rs.380-600 which has civil consequence and before passing such serious order, none of the petitioners have been given any notice or opportunity of hearing. On merits, the learned counsel for the petitioners contended that the respondents have filed a false affidavit before this Court. The post of Dredging Operator and that of Dredging Crane Operator are separate posts having separate pay scales and as such, the petitioners have

rightly been given the pay scale of Rs.425-700. The Resolution, reliance on which has been placed by respondents to pass the impugned order is wholly irrelevant as it was of the year 1977 and the post on which the petitioners have been appointed was created in the year 1980. The learned counsel for the petitioners made reference to the Gujarat Civil Services (Revision of Pay) Rules 1975 as well as to the Gujarat Civil Services (Revision of Pay) Rules 1987.

#. On the other hand, the learned counsel for respondents contended that the petitioners were given appointments in the pay scale of Rs.380-600, but by mistake they were given the pay scale of Rs.425-700 instead of Rs.380-600 and under the impugned order only that mistake has been rectified. The post of Dredging Crane Operator was the post on which the petitioners have been appointed and for which the pay scale has been prescribed under the Resolution dated 5.11.77. However, the learned counsel for respondents does not dispute that the order impugned in this Special Civil Application has been passed without notice or opportunity of hearing to the petitioners.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The facts which are not in dispute are that the petitioners were given the pay scale of Rs.425-700 and under the impugned order their pay scale was reduced to Rs.380-600. Reduction of pay scale certainly has civil consequence. It results in not only reduction of pay but the actual emoluments which the petitioners were drawing. Before passing such an order, it was obligatory on the part of respondents to follow the principles of natural justice. It is no more res-integra that even if the order is passed is an administrative one and in case it has civil consequence, then the affected persons should be given opportunity of hearing by the authority concerned before making such an order. In the present case, the result of the order impugned in this Special Civil Application is of lowering down the pay scales of the petitioners as well as the consequential reduction in the monthly emoluments which the petitioners were drawing. I find sufficient merits in the contention of learned counsel for the petitioners that the order impugned deserves to be set aside only on the ground that it has been passed in violation of principles of natural justice.

#. Otherwise also, on merits I find that the petitioners

have a case in their favour. The Resolution of the Government dated 5th November 1977 has been produced on record of this Special Civil Application. Under this Resolution, in the schedule 'C' appended to the Gujarat Civil Services (Revision of Pay) Rules 1975, the pay scale of the categories of the post in the Directorate of Ports, under the administrative control of Public Works Department have been revised. One of the post which was included in the said Resolution is of Dredging Crane Operator. The pay scale of this post was revised from Rs.175-345 to Rs.380-600. It is not in dispute that the post on which the petitioners have been appointed, i.e. Dredging Operator was created much after this Resolution and they have been given the pay scale of Rs.425-700. The respondents, on the record of this Special Civil Application, have not produced any document to show that while creating the post of Dredging Operator, the Government has prescribed the pay scale of Rs.380-600 for that post. The respondents have further failed to produce on record of this Special Civil Application, any material to show that Dredging Crane Operator and Dredging Operator are the one and the same post of the same pay scale as well as they are interchangeable. From the Government order dated 23rd July 1987 which is on record of this Special Civil Application, it appears that in accordance with the provisions contained in Gujarat Civil Services (Revision of Pay) Rules, 1987 and as per the directions issued by Finance Department Resolutions referred therein, the pay of the Gujarat Maritime Board's employees/officers has been fixed as per annexure 'I' enclosed to that order. This revised pay scale was given effect to from 1.1.87. In annexure 'I' enclosed to the order dated 23.7.87, the post of Dredger Operator was given the pay scale of Rs.1400-2300, i.e. the revised pay scale of Rs.425-700, and the post of Dredging crane Operator was given the pay scale of Rs.1350-2200, i.e. the revised pay scale of Rs.380-600. From the Gujarat Civil Services (Revision of Pay) Rules, 1975, I find that the pay scale for the post of Dredge Operator, under the Directorate of Ports, was Rs.425-700. It appears that certain posts of the Directorate of Ports under the administrative control of PUBLIC WORKS DEPARTMENT were not subjected to revision of pay scale and consequently were not included in the Rules 1975 and as such, under the Resolution dated 5th November 1977 in all 11 posts were ordered to be included in the Rules 1975 and out of which two posts are of Dredger Crane Operator and Operator. The existing pay scale of these two posts initially were of Rs.175-345 and Rs.175-275 respectively which was later on revised to Rs.380-600. So from the reading of Resolution dated 5th November 1977 and the

Rules 1975, there remain no doubt that the post of Dredger Operator and Dredger Crane Operator are altogether different posts having different pay scales in the Department. Prior to 1.1.73, the pay scale of the post of Dredger Operator was of Rs.200-430 and that of Dredger Crane Operator was of Rs.175-345. So prima facie, the defence taken by respondents seems to be not correct. The petitioners have also produced on record of this Special Civil Application, a report of the Gujarat State Third Pay Commission and therefrom, I find that these posts, namely Dredging Operator and Dredging Crane Operator are separately shown in the pay scales of Rs.425-700 and Rs.380-600 respectively. There is yet another post of higher pay scale, i.e. Dredger Operator having the pay scale of Rs.900-1500. So taking into consideration the totality of the facts of this case the order of respondents impugned in this Special Civil Application cannot be allowed to stand. It is a case where opportunity of hearing has to be given to the petitioners by respondents before passing such order, which has not been done in the present case. In the result, this Special Civil Application succeeds and the same is allowed. The order dated 9th March 1982 is hereby quashed and set aside. However, it shall be open for the respondents to pass a fresh order after giving notice and opportunity of hearing to the petitioners. The respondents are directed to pay to the petitioners Rs.5,000/- by way of costs of this petition, as what the petitioners have paid as fees to their counsel in this case.

#. However, this matter has to be decided within a period of three months from the date of receipt of this order and in case the matter is not decided within three months as aforesaid, the petitioners shall be entitled for fixation of pay in the pay scale of Rs.425-700 and further in the corresponding revised pay scales. They shall also be entitled for arrears together with interest thereon at the rate of 15% p.a. from the due date. Otherwise also, where the claim of petitioners is accepted they shall be entitled for fixation of their pay in the higher pay scale as well as for the arrears. In case the respondents decide the matter against the petitioners, then a reasoned order may be passed and a copy of the same may be sent to the petitioners by registered post A.D. and in that eventuality, liberty is granted to the petitioners for revival of this Special Civil Application.

Rule made absolute in the terms aforesaid.

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(sunil)